

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60108

FILE: B-183631

DATE: October 31, 1975

MATTER OF: Kings Point Manufacturing Co., Inc.

97587

DIGEST:

Where solicitation includes both standard discount provision, permitting evaluation of 20-day discounts, and additional provision which could be read as precluding evaluation of 20-day discounts, such discount properly may be evaluated since in light of applicable provisions of Armed Services Procurement Regulation, solicitation as a whole could not reasonably be interpreted as precluding evaluation of 20-day discount and it does not appear that protester was prejudiced by inclusion of additional provision in solicitation.

Kings Point Manufacturing Company, Inc. (Kings Point) protests the award of a contract to any other bidder under Invitation for Bids (IFB) DAAB07-75-B-2225 issued by the United States Army Electronics Command (ECOM), Fort Monmouth, New Jersey for electrical equipment covers. The sole issue for consideration is whether a 20-day prompt payment discount properly may be evaluated under the terms of the invitation. If it may not be, then the M. M. Reif Manufacturing Company (Reif), which bid \$48.95 per unit with a 1 percent 20 day prompt payment discount (for a discounted price of \$48.46), would be displaced as low bidder by Kings Point which bid \$49.82 with a 2 percent 30-day discount (for a discounted price of \$48.82).

Paragraph C.9(a) of Standard Form (SF) 33A, Solicitation Instructions and Conditions, included with the invitation, provided that:

"Notwithstanding the fact that a blank is provided for a ten (10) day discount, prompt payment discounts offered for payment within less than twenty (20) calendar days will not be considered in evaluating offers for award unless otherwise specified in the solicitation. * * *"
(Emphasis added.)

However, solicitation paragraph D.10(b), after referencing paragraph C.9(a), provided that:

"Prompt payment discounts offered for payment within a period of one to twenty calendar days will not be considered in evaluating offers for award." (Emphasis added)

Kings Point alleges that paragraph D.10(b) precludes evaluation of prompt payment discounts offered for periods of less than 21 days and as a result, "a discount must allow 21 days or more to be considered in the price evaluation."

The Army reports that it was its intention merely to re-state rather than alter the meaning of paragraph C.9(a) when it included D.10(b) in the solicitation. It points out that had it intended to change the minimum discount period from 20 days, it would have had to comply with Armed Services Procurement Regulation (ASPR) § 2-407.3(a) (1974), which provides that "if a minimum period more or less than 20 calendar days is determined to be desirable, such minimum period shall be stated in the invitation for bids by including in the solicitation the clause in ASPR 7-2003.35."

That clause states:

"In accordance with subparagraph (a) of the clause entitled 'Discounts' in the Solicitation Instructions and Conditions (Standard Form 33-A), prompt payment discounts will be considered in the evaluation of bids, provided the minimum period for the offered discount is:

*(i) ___ days from date of delivery of the supplies to carrier when acceptance is at point of origin; or

*(ii) ___ days where delivery and acceptance are at destination."

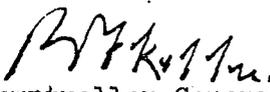
The Army argues that since the clause in ASPR 7-2003.35 was not included in the solicitation, paragraph D.10(b) could not reasonably be read as altering the 20-day minimum discount period permitted by paragraph C.9(a). In addition, it is the Army's position that since ASPR § 2-407.3(a) states that minimum discount periods must be expressed in multiples of 10 days, it would be unreasonable to read the invitation as establishing a 21-day minimum discount period.

The Army concedes that the language in paragraph D.10(b) is "less than clear," and we believe that, standing alone, the phrase "within a period of one to twenty days" could reasonably be interpreted to include the twentieth day. See 86 C.J.S. Time §§ 13.4 and 13.7 (1954, Supp. 1975). However, in the context of the solicitation, we believe that Kings Point's argument is without merit and that paragraph D.10(b) cannot reasonably be read as precluding the evaluation of a 20-day discount.

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Kings Point's reading of the IFB would mean that the Army was willing to consider discount periods of a minimum of 21 rather than 20 days, a result inconsistent with both ASPR § 2-407.3(a) and the standard business practices of offering prompt payment discounts for periods stated in multiples of 10 days. Also, while this would not be conclusive standing alone, we note that none of the other bidders so interpreted the IFB, since of the six bidders offering a prompt payment discount, five bidders offered a 20-day discounted payment period. In any event, it does not appear that Kings Point was prejudiced by its interpretation, since King Point's own bid shows that had it offered a 20-day discount period (as it apparently originally intended to do), it would have offered the same 2 percent discount and thus would still not have been the low bidder.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States